

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-319-E - ORDER NO. 2019-455
OCTOBER 18, 2019

IN RE: Application of Duke Energy Carolinas, LLC)	ORDER GRANTING IN
for Adjustments in Electric Rate Schedules)	PART AND DENYING IN
and Tariffs and Request for an Accounting)	PART MOTIONS FOR
Order)	REHEARING AND
)	RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petitions filed by Duke Energy Carolinas, LLC (“Company,” “DEC,” or “Duke Energy”); the South Carolina Energy Users Committee (“SCEUC”), and the South Carolina Office of Regulatory Staff (“ORS”) seeking rehearing and reconsideration of Commission Order No. 2019-323. The Commission finds that no rehearing of the evidence is necessary in this instance, but that, based upon a full review of the written arguments presented by the parties in conjunction with a review of the record in this case, certain modifications to and clarifications of Order No. 2019-323 are warranted. This Order sets out the Commission’s changes to Order No. 2019-323 and, to the extent that any rulings within this Order conflict with Order No. 2019-323, this Order supersedes the prior order. Any matters not specifically addressed in this order remain unchanged. Our holdings herein and the holdings contained in Order No. 2019-323, which remain unchanged are all supported by the entire record of this case.

We address each of the Petitions below.

Petition of the South Carolina Energy Users Committee

In response to the Petition filed by the South Carolina Energy Users Committee, the Commission denies all three of SCEUC's requests for reconsideration. SCEUC contends that the Commission erred in not disallowing the Company's recovery of all preconstruction costs incurred in connection with the Lee Nuclear Plant. SCEUC argues that the repeal of the Base Load Review Act by way of Act No. 258 of 2018 foreclosed DEC entirely from recovering preconstruction and abandonment costs of the project. However, we find that neither the passage nor the repeal of the BLRA precludes the utility from recovering abandonment costs through base rate cases. Had the General Assembly intended Act 258 to prohibit entirely the recovery of these costs, it could have included an explicit provision to that effect in the legislation, but it did not. We cannot, therefore, infer that Act 258 bars recovery in the manner argued by SCEUC. *See Tilley v. Pacesetter*, 333 S.C. 33, 40, 508 S.E.2d 16, 20 (1998) (had the legislature intended a specific remedy for a certain Consumer Protection Code violation to be exclusive of any others, it would have so specified. However, because it did not, another statutory remedy was also available).

SCEUC also argues that the Commission should have disallowed entirely the clean-up costs incurred by the Company in connection with the excavation of coal ash basins at the W.S. Lee Steam Station in Anderson County. These costs were incurred pursuant to a Consent Agreement entered by the Company and the South Carolina Department of Health and Environmental Control in September 2014. The Consent Agreement is valid, having been entered pursuant to SCDHEC's authority under the South Carolina Hazardous Waste Management Act, S.C. Code. Ann § 44-56-10, *et seq.*, the Pollution Control Act, S.C. Code

Ann. § 48-1-10 *et seq.*, and the South Carolina Solid Waste Policy and Management Act, S.C. Code Ann. §44-96-10, *et seq.* We decline to disallow these costs resulting from the Company's obligations under the Consent Agreement.

Finally, SCEUC has requested that the Commission require the Company to implement market-based real-time pricing. SCEUC mistakenly states in its motion that the Commission "overlooked and misapprehended" witness O'Donnell's testimony and its recommendation that the hourly rate in the Company's rate schedule LGS-RTP be set at the lower of the Company's marginal cost or a wholesale market rate available at the time of the sale. Rather, the Commission simply chose not to adopt SCEUC's recommendation.

The real-time pricing ("RTP") tariff is a voluntary rate option that offers large customers the opportunity to purchase incremental energy at a rate calculated based upon the Company's marginal cost of the generator that is expected to serve the next kWh of system load based upon all available generating plants. It is not intended to be a proxy for wholesale market-based pricing, or to be a mechanism for the Company to shop the wholesale market for low cost electricity on behalf of RTP customers and allow them to choose between the current wholesale market price and a rate based upon the Company's marginal cost to generate an additional kWh.

The Company testified that it constantly shops the wholesale market for the benefit of all its customers and purchases wholesale power when wholesale prices are lower than the cost the Company would incur if it generated the power itself. In this way, the savings resulting from the wholesale market are enjoyed by all of the Company's customers and not just a select few. The Company explained that applying hourly rates that are lower

than the Company's marginal system production costs would potentially result in other customers subsidizing RTP customers if the forecasted non-firm purchase wasn't available when needed, or if other conditions such as transmission constraints wouldn't allow the purchase to occur. We find the Company's RTP tariff program to be just and reasonable, and we decline to adopt the recommendation of the SCEUC relating to real-time pricing.

Petition of the Office of Regulatory Staff

The Office of Regulatory Staff has proposed several clarifications and modifications to Order No. 2019-323, which we adopt as follows:

1. We clarify that the Company's allowable rate base is \$5,445,665,000, and the net income for return is \$390,133,000.
2. We clarify that the Company, for purposes of this rate case, is to use the Cost of Service Study presented by the Company to allocate all revenues, expenses, and rate base items and to design rates for all customer classes, unless otherwise specified by the Commission.
3. We clarify that the Commission intended to order a 75% disallowance of the \$1,094,000 of Duke Energy CEO Lynn Good's executive compensation allocated to South Carolina ratepayers. The resulting net adjustment to executive compensation in Adjustment No. 29 would be (\$1,222,000), rather than (\$1,085,000).
4. We modify our ruling as to the working capital adjustment (Adjustment No. 33) from \$83,971,000 to \$82,230,000.
5. As to our treatment of deferral accounting treatment for certain costs, we affirm the following:

(a) Customer Connect Operation and Maintenance Deferral

The Commission permits continued deferral of costs incurred in connection with the ongoing deployment of the Customer Connect program, consistent with Order No. 2018-552 in Docket No. 2018-207-E.

(b) AMI Deferral

The Commission permits deferral of costs incurred in connection with implementation of Advanced Metering Infrastructure.

(c) Coal Ash Deferral and Amortization

The Commission permits continued deferral of costs incurred in connection with complying with environmental remediation requirements consistent, with Order No. 2016-490 in Docket No. 2016-196-E, and clarifies that the amortization period for the previously deferred environmental costs is five years as proposed by the Company and unopposed by ORS.

(d) Grid Modernization Deferral

The Commission's Hearing Officer Directive Order 2019-26H approved the Stipulation governing the deferral of the proposed Grid Improvement Plan. To clarify as requested by ORS, the Commission adopts and incorporates by reference the terms of the Stipulation in our final written order.

(e) Credit Card Fee Deferral

The Commission grants the Company's request that it be permitted to defer costs incurred in connection with implementation of its proposed transaction-fee-free credit card payment program.

(f) Due Process Claim Relating to Notice

The Office of Regulatory Staff also challenged the sufficiency of the notice given to customers of the proposed rate increase, arguing that the dramatic decrease in Base Facility Charge (“BFC”) rates and the resulting increase in volumetric rates requested after the issuance of the initial notice to customers of the proposed new rates made the initial notice inadequate to afford them the opportunity to determine how they would be affected and whether they should intervene or otherwise oppose the new rates. ORS requested that the Commission require the Company to issue new notices and hold rehearing limited to the issue of the effect of the BFC on volumetric rates, and it stated that a hearing would not be necessary if no customer requested one.

We find that the notice of the Company’s proposed rate increase conforms with the requirement of due process, and we therefore reject ORS’s request that we require the issuance of a new notice and hold a limited rehearing. The South Carolina Supreme Court has held that substantial prejudice must be shown to establish a due process claim. *Tall Tower, Inc. v. S.C. Procurement Panel*, 294 S.C. 225, 363 S.E.2d 683 (1987). The Court has also made it clear that due process is flexible and calls for such procedural protections as the situation requires. *Kurschner v. City of Camden Planning Dep’t*, 376 S.C. 165, 656 S.E.2d 346 (2008). The ORS has not demonstrated such prejudice here. Put most simply, due process in this case does not require that the proposed rates stated in the Company’s initial Application foreclose adjustment of component elements of its proposed charges in response to customer concerns. In this case, all the stakeholders had adequate notice of the

additional revenue the Company was requesting, since the revenue request contained in the initial notice exceeded the actual revenue awarded.

In this docket, thirteen parties intervened, including influential advocacy groups like the S.C. State Conference of the National Association for the Advancement of Colored People (“NAACP”), Upstate Forever, the Sierra Club and the South Carolina Coastal Conservation League. Many of these groups participated in this proceeding in a representative capacity, advocating for customers. These groups brought substantial expertise to the proceeding and offered expert testimony on the issue of the proposed BFC. These experts clearly and unmistakably understood the inverse relationship between the reduction in the BFC they were advocating and an increase in the volumetric component of the Company’s proposed rates. It is significant that none of these parties has joined the ORS in its concern about the purported problem with the notice provided in the proceeding. Additionally, hundreds of customers filed letters of protest with the Commission, and hundreds more attended the three public night hearings held in Spartanburg, Greenville, and Anderson. We find that the level of participation in the case by both the intervenors and by individual customers demonstrates that the notice given of the requested rate increase met the standards for due process.

Petition of Duke Energy Carolinas, LLC

The Company seeks reconsideration and rehearing as to multiple rulings contained in Order No. 2019-323. We decline to rehear or reconsider any of the rulings complained of by DEC. We address the several of the Company’s arguments more specifically below.

1. Coal Ash Remediation and Disposal Costs

The Commission's decision to disallow recovery of \$469,894,472 in coal ash remediation and disposal costs ("Coal Ash Costs") is supported by the substantial evidence on the whole record. The unpermitted discharge by Duke Energy of approximately 27 million gallons of coal ash wastewater and an estimated 39,000 tons of coal ash into the Dan River played a deciding role in the development of North Carolina's Coal Ash Management Act ("CAMA") in its present form, not only accelerating the timing of action required, but also limiting the options to remediate and close coal combustion residuals impoundments more than would eventually occur under the Federal Coal Combustion Residuals ("CCR") Rule. (Tr. p. 1340-15, ll. 7-20). In response to the Dan River spill, the North Carolina Legislature passed CAMA, which required the closure of existing coal ash ponds as well as conversion from wet ash to dry ash handling. (Tr. p. 1459-35, ll. 13-16). ORS witness Witliff testified that DEC and Duke Energy Progress, LLC ("DEP") were criminally and civilly negligent in their operations and maintenance of the impoundments for years prior to the enactment of CAMA, confirming that DEC and DEP failed to responsibly address and correct these issues adequately -- and consequently in a much less costly -- manner than it is currently being required to do. (Tr. p. 1340-16, ll. 2-8). DEC's State President for South Carolina, Kodwo Ghartey-Tagoe, acknowledged in his testimony that in 2015, the Company pled guilty to violations of the Clean Water Act and its regulations as part of the criminal investigation following the Dan River spill. (Tr., p. 683). Duke Energy management made specific decisions that resulted in the coal ash spill in North Carolina, that in turn, led to the creation of CAMA. (Tr. p. 1459-39, ll. 29-31).

North Carolina's CAMA is significantly more restrictive and stringent than the federal CCR Rule (Tr. p. 1340-21, ll. 3-4). Additionally, witness Wittliff testified that North Carolina's CAMA rules resulted in additional expenses being incurred at several of DEC's facilities due to accelerated closure schedules that the federal CCR rule did not require or closure requirements that the federal CCR rule did not require. (Tr. p. 1340-32, Table 5.2). Further, DEC directly assigns certain costs to its North Carolina and South Carolina jurisdictions, and often these costs are derived from laws and regulations specific to that jurisdiction. (Tr. p. 2028-5, l. 20 - p. 2028-6, l. 4). The Company has already excluded certain costs from this proceeding that were incurred due to North Carolina law including recovery of certain costs that are associated with the provision of drinking water to North Carolina residents, as well as the costs of compliance with the North Carolina Clean Smokestacks Act, North Carolina Renewable Portfolio Standards, and the North Carolina Competitive Energy Solutions for NC (HB.589) laws. (Tr. p. 2032-6, ll. 17-21). Finally, the South Carolina General Assembly has not passed legislation like North Carolina's CAMA. (Tr. p. 1340-20, ll. 21-22).

In Order No. 2019-323, at pages 41-53, the Commission clearly laid out and considered the evidence presented by the parties and detailed its analysis in reaching the conclusion that it would be unreasonable for the Company's South Carolina customers to bear the burden of these coal ash expenses. These costs stem from Duke's negligence and would impose great costs upon South Carolina customers resulting from the application of North Carolina law. The Commission's Order is not arbitrary or capricious, contains all required analysis, and rests upon the substantial evidence in the whole record. While a

utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith, the utility bears the ultimate burden of demonstrating reasonableness of its costs where this presumption is challenged. In this case, multiple witnesses testified that Duke Energy's negligence led to the release of coal ash into the Dan River and the enactment of CAMA.

The Company alleges that the Commission's Order results in an unconstitutional taking. The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. However, no such taking occurred here, because the Company had no property right to recovery of coal ash disposal costs. The Commission is empowered by the General Assembly to set rates, and its determination of which expenses are recoverable is a component of its ratemaking authority. Duke has cited no legal authority restricting the discretion of the Commission in determining the recoverability of the coal ash disposal expenses at issue. Because the Commission has this discretion, Duke has no protected property interest in recovery of the expenses. In determining whether a protected property interest exists in the context of utility ratemaking, the focus must be on the degree of discretion given to the decisionmaker, not on the probability of the decision's outcome. *S.C. Elec. & Gas Co. v. Randall*, 333 F.Supp.3d 552, 571 (D.S.C. 2018).

The Company has also asserted that the Commission's Order violates the Commerce Clause of the United States Constitution. This is the first time the Company has raised this argument. In discussing Petitions for Reconsideration or Rehearing filed before it, the South Carolina Supreme Court stated, "[t]he purpose of a petition for

rehearing is not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing is not just to have the case tried in this court a second time." *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933). In any event, the Commission's order does not engage in economic discrimination or burden the flow of interstate commerce.

In another new argument, raised for the first time, the Company has asserted that the Commission is equitably estopped from disallowing recovery of the coal ash disposal costs at issue. Likewise, this argument fails.

Generally, "estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy." *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010) (quoting *Greenville Cty. v. Kenwood Enters., Inc.*, 353 S.C. 157, 171, 577 S.E.2d 428, 435 (2003)). Estoppel runs against the government only in certain limited situations. In these situations, the party claiming estoppel against the government "must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position." *Id.* at 236-37, 692 S.E.2d at 506. "The essence of equitable estoppel is that the party entitled to invoke the principle was misled to his injury." *S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). "The party asserting estoppel bears the burden of establishing all its elements." *Morgan v. S.C. Budget and Control Bd.*, 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (quoting *Estes v. Roper Temp. Servs.*, 304 S.C. 120, 122, 403

S.E.2d 157, 158 (Ct. App. 1991)). "Absent even one element, estoppel will not lie against a government entity." *Id.* at 320, 659 S.E.2d at 267.

In this case, the Company cannot show that the Commission's disallowance of the coal ash disposal costs at issue meets any of the above-enumerated elements of estoppel. The Company itself removed certain costs attributable to CAMA and other North Carolina laws. (See Tr. p. 2032-6, ll. 17-21). The Company cannot now claim justifiable reliance that this Commission would allow recovery of the coal ash disposal costs.

The Company also incorrectly claims that the Commission made factual errors. According to the South Carolina Supreme Court, "[t]he Commission sits as the trier of facts, akin to a jury of experts." *Hamm v. Pub. Serv. Comm'n of S.C.*, 309 S.C. 282, 287, 422 S.E.2d 110, 113 (1992). While parties may present varying viewpoints, it is the Commission that tries the facts and bases its conclusion thereon. The Commission is the trier of fact, and it properly weighed all evidence put before it by the parties and made its decision. Duke contends that the testimony of ORS witness Wittliff, upon which the Commission based several rulings now complained of in the current motion, is inaccurate or incorrect, but the Commission, as the trier of fact, found otherwise.

Finally, the Company alleges that the Commission's Order fails to make findings of fact or conclusions of law. This claim is without merit. The Commission issued a detailed, 71-page order which included ample analysis to enable a reviewing court to address the issues.

2. Treatment of Deferrals

The Commission held in Order No. 2019-323 that the Company would be allowed to recover capital-related deferred costs and earn a return on them, but that it would be permitted to recover operating-related deferred costs only, without earning a return. Thus, the Commission concluded that DEC should not earn returns on portions of its deferrals for the Carolina West Control Center ("CWCC"), W.S. Lee Combined Cycle Facility ("Lee CC"), Environmental Costs, Advanced Metering Infrastructure ("AMI"), Customer Connect, and Grid Improvement Costs ("GIC"). In so holding, the Commission was performing its duty to determine the most equitable treatment of the Company's requested deferrals by balancing what is best for both the customers and the Company. No statutes or regulatory standards govern recovery of a cost of capital return on a deferral balance.

In its Petition, DEC merely states that it was undisputed that the deferred costs were prudently incurred and used and useful, but DEC failed to provide any testimony to show that the Company is entitled to earn a return on these costs. While the Commission previously approved the Company's requests for accounting orders to defer the expenses detailed in the Application, the Commission orders provide no guarantee to the Company for cost recovery including a return on those expenses. ORS witness Payne testified that, per the National Association of Regulatory Utility Commissioners ("NARUC") Rate Case and Audit Manual, a company may recover prudently incurred operating expenses, without a weighted average cost of capital ("WACC") or rate base treatment. (Tr. p. 1613-4, ll. 18-22). Witness Payne further testified per the NARUC Rate Case and Audit Manual that a company may recover prudently incurred capital costs through depreciation expense over

the life of the asset, while earning a WACC return on the undepreciated balance. (Tr. p. 1613-4, l. 22-p. 1613-5, l. 4). In this case, except for the deferred environmental costs, the Commission authorized DEC to fully recover its deferred expenses. Each of the disputed deferral treatments is discussed below.

(a) Addressing CWCC, based upon documentation provided by DEC, ORS recommended a deferral balance of \$5,042,000, which allows DEC to recover the same deferred cost of capital and deferred depreciation expense as DEC proposed. (Tr. p. 1613-6, ll. 8-10). DEC offered no supporting testimony to support its requested deferral treatment. ORS's recommendation is consistent with regulatory accounting practices for capital-related and operating-related costs, and ORS's recommendation still allows DEC to recover its actual deferred costs. (Tr. p. 1613-6, ll. 13-18). ORS witness Morgan recommended an amortization period of 30 years for CWCC, which is the anticipated service life of the asset. (Tr. p. 2015-3, ll. 15-16). This is more fully discussed in Order No. 2019-323 at pages 35-37.

(b) Addressing Lee CC, based upon documentation provided by DEC, ORS recommended a deferral balance of \$21,946,000, allowing DEC to recover the same deferred cost of capital, deferred depreciation, deferred operation and maintenance (“O&M”), and deferred property tax expenses that DEC proposed, but ORS did not include a return on those deferred costs. (Tr. p. 1613-7, ll. 20-22). ORS witness Payne testified ORS's recommendation to include the deferred cost of capital portion of the deferral in rate base and exclude the deferred depreciation, O&M expenses, and property tax expenses from rate base is consistent with regulatory accounting practices for capital-related and

operating-related costs. (Tr. p. 1613-8, ll. 3-6). DEC offered no supporting testimony to its request for an amortization period of three years, while ORS witness Morgan testified that the more appropriate amortization period was the remaining service life of the asset of 39 years. (Tr. p. 2015-4, ll. 3-5). This is more fully discussed in Order No. 2019-323 at page 37.

(c) Addressing the environmental costs, substantial testimony from witnesses O'Donnell and Wittliff supports the Commission's treatment of DEC's expenses related to coal ash disposal and remediation. Due to the exclusion of the expenses related directly to CAMA, ORS recommended a deferral balance of \$96,131,000 with the deferred capital costs to be included in rate base, as is consistent with regulatory accounting practices. (Tr. p. 1613-9, ll. 11-21). The full discussion of the Commission's treatment of this adjustment is at pages 41-53 of Order No. 2019-323.

(d) Addressing AMI, based upon documentation provided by DEC, ORS recommended a deferral balance of \$32,629,000. (Tr. p. 1613-11, ll. 7-9). This recommendation would allow DEC to recover the same deferred cost of capital and deferred depreciation expense as DEC proposed but did not include a return on the deferred costs. (Tr. p. 1613-11, ll. 7-9). ORS recommended the deferred cost of capital portion be included in rate base. (Tr. p. 1613-11, ll. 9-12). This treatment is consistent with regulatory accounting practices for capital-related and operating-related costs, and this treatment allows DEC to recover its actual deferred costs through amortization of the proposed deferral balance which is a sufficient level of cost recovery. (Tr. p. 1613-11, ll. 12-17). DEC offered no support for its request to amortize this deferral over a three-year period,

but ORS witness Morgan testified the service life of the AMI meters is 15 years. (Tr. p. 2015-8, ll. 19-20). DEC witness Schneider also testified that the expected life of an AMI meter is 15 years for depreciation purposes. (Tr. p. 1072, l. 22 - p. 1073, l. 3). The Commission's treatment of Duke's South Carolina AMI is found at pages 53-54 of Order No. 2019-323.

(e) Addressing Customer Connect, based upon documentation provided by DEC, ORS proposed that DEC be permitted recovery of its actual deferred O&M expenditures as of December 31, 2018, but that the Company not be permitted to earn a return on these expenses. (Tr. p. 1607-8, ll. 16-20; p. 1613-13, ll. 1-2). The Commission adopted the ORS recommendation as consistent with the principle of regulatory accounting regarding the treatment of capital versus operating expenses. The Commission's treatment of Customer Connect is discussed at pages 60-61 of Order No. 2019-323.

(f) Addressing Grid Improvement Costs, based upon documentation provided by DEC, ORS recommended a deferral balance of \$5,904,000, which will allow DEC to recover the same deferred cost of capital, deferred depreciation, deferred O&M, and deferred property tax expenses that DEC proposed. (Tr. 1613-14, ll. 15-17). ORS recommended the deferred cost of capital portion of the deferral balance be included in rate base, which is consistent with regulatory accounting practices. (Tr. p. 1613-14, ll. 18-23). This treatment allows DEC to recover its actual deferred costs through amortization of the proposed deferral balance, which is a sufficient level of cost recovery. (Tr. p. 1613-15, ll. 1-3). This treatment is addressed at pages 61-62 of Order No. 2019-323.

3. Return on Equity

DEC also seeks reconsideration of the Commission's ruling adopting 9.5 percent as the appropriate Return on Equity ("ROE"). The Company complains that this Commission accepted Company witness Hevert's ROE testimony as reliable in the SCE&G Consolidated Cases¹, and that having done so, it cannot now find his testimony to be unreliable here. We reject this argument.

The standards governing the Commission's determination of the appropriate ROE are not in dispute. South Carolina law requires that the Commission's determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record. Moreover, a utility's ROE should be commensurate with returns on investments in other enterprises having corresponding risks, and must be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

DEC is not asking this Commission to base its decision on evidence produced in the record of this case, but to base its decision on evidence that was produced in an entirely different docket and related to an entirely different utility, largely based upon the fact that the two utilities presented the same expert witness, who proposed the same ROE for both, in spite of the dissimilarity of the two companies. This request is contrary to South

¹ Specifically, Docket No. 2018-370-E, the SCE&G proceeding incident to the abandonment of the nuclear projects V.C. Summer Units 2 and 3, and the merger with Dominion Energy.

Carolina law. DEC presented no evidence in this case to suggest that DEC and SCE&G were comparable in terms of risk such that they should be awarded the same ROE, nor could it. Moreover, the ultimate ROE awarded in the SCE&G Consolidated Cases was the result of a settlement, while this case was fully litigated. Because SCE&G and DEC did not have corresponding risks, it is logical that they would be awarded different ROEs.

Furthermore, the Commission based its ruling upon the testimony of ORS witness Parcell, who testified that a reasonable ROE in this case would fall in the range of 9.1% to 9.5%. (Tr. p. 1173, ll. 11-12). Additionally, Walmart witness Tillman testified that the average of the ROEs authorized by state regulatory commissions in 111 investor-owned electric utility rate cases from 2016 to date is 9.61%. (Tr. p. 1519-15; Exhibit GWT-4.) Tillman also cited SNL Financial data yielding an average ROE for vertically-integrated utilities authorized from 2016 to the present of 9.76%. The data presented further indicates that ROEs are trending downward. (Tr. p. 1519-15; Hearing Exhibits 53 and 54). The ROE authorized in Order No. 2019-323 is supported by the testimonies of witnesses Parcell and Tillman. Accordingly, we reject DEC's request for reconsideration of our ruling on this issue.

4. Coal Ash Litigation Expenses

The Company asserts that the Commission erred in denying recovery of expenses it has incurred in connection with litigation seeking liability coverage for coal ash related issues. The Commission considered the substantial evidence on the whole record presented by the parties and determined that the Company failed to carry its burden of persuasion that its coal ash litigation expenses were reasonably recoverable. While the Company is

entitled to a presumption that its expenditures were reasonable and incurred in good faith, "the presumption in a utility's favor clearly does not foreclose scrutiny and a challenge. In those circumstances, the burden remains on the utility to demonstrate the reasonableness of its costs. *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 109-10, 708 S.E.2d 755, 762-63 (2011).

Based on the substantial evidence on the whole record, the Commission properly excluded from recovery the expenses incurred in the coal ash litigation. While the initial expenses for which the Company sought recovery were entitled to a presumption of reasonableness, once these expenditures were reasonably challenged by way of the testimony filed by ORS recommending that the Company not be entitled to recovery of coal ash litigation expenses, the Company failed to provide meaningful justification for these expenses. ORS witness Hamm testified that the Company failed to provide the Commission with "specific and understandable information demonstrating that all expenses should be paid for by DEC customers in the first place." (Tr. p. 1309, ll. 3-6). This Commission cannot presume that the expenses a utility seeks to recover in its rates and charges are legitimate if they cannot be subjected to the scrutiny of an audit or examination. Every rate received by an electric utility must be just and reasonable. S.C. Code Ann. §58-27-810 (2015). Here, the Commission concluded that it would be unreasonable to pass these coal ash litigation expenses on to the Company's customers absent more detailed information by way of which the Commission could determine with more certainty whether recovery of these expenses from the ratepayers would be just and reasonable. Accordingly, the Commission correctly found that the Company had failed to

carry its burden of demonstrating that passing these costs to the ratepayers would be just and reasonable.

Conclusion

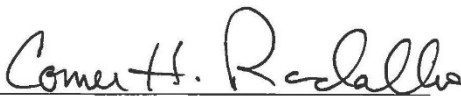
Having reviewed all the filings by the parties, and based upon the entire record of this docket, the Commission orders the modifications and clarifications to Order No. 2019-323 discussed herein.

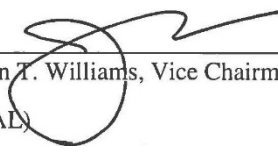
1. The request by the SCEUC that the Commission reconsider its decision allowing recovery of preconstruction costs incurred at the Lee Nuclear Plant is denied;
2. The request by the SCEUC that the Commission disallow recovery of the coal clean-up costs incurred at the W.S. Lee Steam Station pursuant to the Company's consent order with DHEC is denied;
3. The request by the SCEUC that the Commission implement market-based real-time pricing is denied;
4. The requests by Duke Energy Carolinas that the Commission reconsider and revise its rulings with regard to disallowance of certain expenses and treatment of certain deferrals are denied;
5. The request by Duke Energy Carolinas that the Commission reconsider and revise its ruling on ROE is denied;
6. The request by Duke Energy Carolinas that the Commission reconsider and revise its ruling denying recovery of coal ash litigation expenses is denied; and
7. The clarifications and modifications to Order No. 2019-323 recommended by the Office of Regulatory Staff are adopted as enumerated herein.

Rehearing and reconsideration of any matters not specifically ordered to be changed are denied.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Comer H. Randall, Chairman


Justin T. Williams, Vice Chairman
(SEAL)